

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45 |
| Universal Service |) | |

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC)¹ strongly supports the *Recommended Decision* of the Federal-State Joint Board, concluding that the Commission should decline to expand the existing definition of services supported by federal universal service.² In particular, SBC agrees with the Joint Board (and the vast majority of comments filed with the Board) that no new service satisfies the statutory criteria for support in section 254(c) of the Act, and that the public interest would not be served by expanding the scope of universal service at this time.³

At the same time and as part of the broader reforms discussed below, the Commission should, as it committed to do nearly six years ago in the *First Report and Order* in this proceeding, re-evaluate whether non-primary residential lines and multiple line businesses should be subsidized by federal universal service support mechanisms.⁴ In light of the enormous strains on the universal service fund caused by the erosion of the contribution base and increases

¹ SBC contributes to the universal service fund as an incumbent local exchange carrier (ILEC), as an interexchange carrier (IXC), and as competitive local exchange carrier (CLEC).

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC02J-1 (rel. July 10, 2002 (*Recommended Decision*)).

³ *Id.* at para. 1, citing 57 U.S.C. § 254(c).

⁴ *Federal-State Joint Board of Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8829-30 (1997) (*First Report and Order*) (subsequent history omitted).

in the universal service funding requirement, the Commission no longer can avoid determining definitively whether non-primary lines fit within the definition of universal service.

However, as SBC has expressed in various other proceedings and the Tenth Circuit has recognized, the Act requires significant and coordinated universal service reform at both the state and federal levels. Adjusting the definition of universal service to include only essential services must be accompanied by broader reform at the state level to rationalize residential prices and to replace implicit forms of support with explicit universal service support. The failure to do so would be confiscatory and contrary to the intent of section 254 of the Act. Similarly, these pressing issues must be addressed if the Commission's pending *Intercarrier Compensation* proceeding is to result in meaningful and lasting reform of the compensation regime for interstate switched access charges.

I. THE COMMISSION SHOULD NOT EXPAND THE LIST OF CORE SERVICES AT THIS TIME.

In the 1996 Act, Congress directed the Commission and states to take steps necessary to ensure the availability of affordable, quality telecommunications services to all Americans. Among other things, the Act required the Commission to establish and maintain a list of “core” telecommunications services eligible for universal service support, and, from time to time, to review and modify that list to reflect the evolving nature of telecommunications services and technologies.⁵ In establishing this list of core services, the Commission and Joint Board must consider specific, statutory criteria, including whether the services in question are:

- essential to education, public health or public safety (the “essential” requirement);
- subscribed to by a substantial majority of residential customers (the “ubiquity” requirement);
- deployed in public telecommunications networks by telecommunications carriers (the “availability” requirement); and

⁵ *Id.*

- consistent with the public interest convenience and necessity.⁶

Taken together, these criteria make clear that federal universal service support is intended to serve as a safety net, providing support only to the extent necessary to ensure that genuinely essential services are ubiquitously available at affordable rates. The Commission therefore should be reticent to add to the list of core services eligible for support, and should do so only if the cost of deploying a truly essential service or functionality in a particular area would make it unaffordable at market-based rates.

At the same time, the Commission should take care that federal universal service support mechanisms do not undermine or otherwise distort competition in telecommunications markets. As the Commission itself has recognized, the provision of universal service support can skew the marketplace, allowing government funding rather than consumer choice to drive innovation and investment.⁷ Any decision to modify the definition of core services therefore must be consistent with the principles of technological and competitive neutrality embodied in the Act.⁸

As the Joint Board recognized, there is broad industry consensus that the Commission should not expand the definition of universal service at this time because no new services satisfy the statutory criteria in section 254(c).⁹ Expanding the list of core services to include the services reviewed in the *Recommended Decision* would simply distort the telecommunications market, and exacerbate existing strains on the universal service system caused by the erosion of the contribution base as end users migrate to services and technologies that do not contribute to

⁶ 47 U.S.C. § 254(c)(1).

⁷ *First Report and Order*, 12 FCC Rcd at 8801-03.

⁸ *Id.* at 8801.

⁹ *Recommended Decision* at para. 7.

universal service. It also would increase the cost of basic service for all consumers by forcing subscribers of basic services to subsidize non-essential services through the universal service funding mechanism. The public interest therefore would not be served by expanding the scope of universal service at this time.¹⁰

A. Advanced/High-Speed Services

SBC agrees with the Joint Board that advanced and high-speed services do not meet the criteria in section 254(c) for inclusion in the list of supported services.¹¹ In the first place, because such services are used primarily to obtain high-speed access to the Internet, the Commission could not conclude that advanced services are “essential for education, public health, or public safety,” without first concluding that Internet access itself is “essential.” However, all of the resources available on the Internet are accessible through other means, including, among other things, at libraries or through voice communications. Moreover, even if Internet access itself could be deemed “essential” consistent with section 254(c)(1)(A), which seems unlikely, advanced/high-speed services are not essential because consumers readily have available alternative ways to access the Internet.¹² Among other things, consumers can access the Internet through dial-up connections or through advanced services available at schools and

¹⁰ *Id.* at para. 1.

¹¹ *Id.* at para. 11.

¹² *Id.* at para. 12. *See also* Comments of SBC Communications Inc., *Federal-State Joint Board on Universal Service Seeks Comment Review of the Definition of Universal Service*, CC Docket No. 96-45 (filed November 5, 2001) (SBC Comments); Reply Comments of SBC Communications, *Federal-State Joint Board on Universal Service Seeks Comment Review of the Definition of Universal Service*, CC Docket No. 96-45 (filed January 4, 2002) (SBC Reply). SBC does not reiterate here all of the arguments it made in its comments and reply comments to the Joint Board, but rather incorporates those comments herein by reference.

libraries. Advanced or high-speed services thus are by no means essential to public health and safety or for education.

Such services also fail the ubiquity criterion because they are not subscribed to “by a substantial majority of residential consumers.”¹³ Although the number of high-speed lines connecting residential customers to the Internet has increased over the past several years, less than 20 percent of households subscribe to broadband services. Thus, not even a majority, much less a “substantial majority,” of residential customers subscribes to such services.

In addition, SBC agrees with the Joint Board that adding advanced or high-speed services to the list of core services would raise significant public policy issues.¹⁴ First, providing universal support for such services could significantly increase the size of the fund, increasing the financial burden on carriers and, ultimately, consumers.¹⁵ At the same time, only about half of all households own computers.¹⁶ As a consequence, many residential customers could not utilize advanced or high-speed services, even if such services were available to their homes. Moreover, even without universal service support, there has been steady growth in the deployment of advanced services and the number of subscribers to such services. As such, there can be no justification for increasing the support burden for all consumers by extending universal service support to advanced services.

Second, expanding the definition of universal service to include advanced services would distort the market for such services and violate the principle of technological neutrality. Because

¹³ *Recommended Decision* at para. 13.

¹⁴ *Id.* at paras. 15-17.

¹⁵ *Id.* at 15.

¹⁶ *Id.* at para. 13, citations omitted.

certain advanced services platforms (such as satellite) currently do not provide other core telecommunications services, carriers providing services over those platforms would be ineligible for support. Supporting advanced services thus could create financial incentives to deploy such services over certain technologies. In light of the rapid pace of technological change in the advanced services market, the Commission should avoid any action that could disrupt that market, and, instead, continue to rely on competition to promote deployment of advanced services.

B. Enhanced Voice Grade Access

SBC also concurs with the Joint Board that the Commission should not modify the existing definition of voice grade access and provide universal service support for enhanced dial-up access to the Internet.¹⁷ As the Joint Board points out, modifying the definition of voice grade access to increase modem speeds to access the Internet would not meet the statutory criteria in section 254(c).¹⁸ First, a network transmission component of Internet access is not essential to education, or to public health or safety because community and public service agencies already can be accessed through a variety other means, including through ordinary voice communications and web access through schools and libraries.¹⁹ Second, the network transmission component of Internet access is not “subscribed to by a substantial majority of residential customers.”²⁰ As noted above, only about half of all households own computers, and

¹⁷ *Recommended Decision* at para. 22.

¹⁸ *Id.* at para. 25.

¹⁹ *Id.* Even if the Commission reasonably could conclude that a specific bandwidth for dial-up Internet access is “essential,” which is unlikely, it would have to establish a data-grade access standard, not revise the existing voice-grade standard. The Commission should modify the voice-grade access standard only if the current standard is insufficient for *voice* applications.

²⁰ *Id.*

thus are even capable of accessing the Internet. Thus, even if consumers that subscribe to the Internet could be deemed to be “subscribers” to the network transmission component of Internet access, the Commission could not conclude that such consumers constitute a “*substantial majority* of residential customers.”²¹

Modifying the definition of universal service to include enhanced voice grade access to the network also would be inconsistent with the public interest. First, many carriers currently cannot provide enhanced voice grade access throughout their service areas. Consequently, modifying the definition of voice grade access could render many carriers ineligible for universal service support. Second, upgrading the nationwide network to enable ubiquitous dial-up access to the Internet at higher transmission speeds would significantly increase the size of the universal service fund, increasing the cost of services to all consumers. And, even if carriers upgraded their networks, consumers would not necessarily obtain higher speed connections to the Internet because of factors beyond the carriers’ control. These factors include: (1) customer premises equipment and deregulated inside wiring; (2) facilities and equipment of other carriers involved in the transmission; and (3) ISP equipment and inside wiring at the ISP’s location. Moreover, requiring carriers to upgrade their networks to provide enhanced voice grade access to the Internet could divert resources and capital from the deployment of advanced services. The Commission therefore should not modify the existing definition of voice grade access unless and until it finds that the current standard is insufficient for voice applications.

C. Soft Dial Tone/Warm Line

The Commission also should not expand the definition of supported services to include soft dial tone or warm line (SDTWL) functionality because they are not “telecommunications

²¹ *Id.*

services,” and thus are not eligible for universal service support.²² SDTWL functionality enables an end user to use an otherwise disconnected line to contact emergency services, and thus is utilized only where service has not been established or where it has been disconnected. In that instance, where there is no established relationship between the LEC and the end user, the carrier realistically cannot charge an end user a fee for using SDTWL. As a consequence, SDTWL does not meet the statutory definition of a “telecommunications service,” which is defined as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”²³

In addition, as the Joint Board observed, modifying the definition of universal service to include SDTWL functionality would distort competition in telecommunications markets. Because wireless carriers are incapable of providing a continuous connection to emergency services for all inactivated handsets,²⁴ adding SDTWL to the list of core services would render wireless carriers ineligible for universal service support. Moreover, requiring ubiquitous deployment of SDTWL would impose significant costs (greatly increasing the size of the fund), conflict with Commission policies relating to local number portability and numbering resource optimization, and impose significant burdens on the 911 system.²⁵ Adding SDTWL to the list of core services therefore is not in the public interest.

D. Extended Area/Toll/Calling Card/Payphone/N11 Services

Finally, SBC agrees with the Joint Board that the Commission should not add extended area, toll, calling card, payphone lines or N11 services to the list of core services. Even if all

²² 47 U.S.C. § 254(c) (limiting universal service support only to “telecommunications service”).

²³ 47 U.S.C. § 153(46).

²⁴ *Recommended Decision* at para. 31.

these services could be deemed essential and ubiquitous, which is questionable, including such services in the definition of universal service would skew the market by rendering many carriers ineligible for universal service support. Adding SDTWL to the list of core services therefore is not in the public interest.

II. THE COMMISSION SHOULD RE-EVALUATE WHETHER THE DEFINITION OF UNIVERSAL SERVICE SHOULD INCLUDE NON-PRIMARY RESIDENTIAL LINES AND BUSINESS LINES & SERVICES

While the Joint Board's Recommended Decision was constrained to specific service functionalities, there is good reason to broaden the definitional analysis to account for issues implicated by various classes of customers. In particular, the Joint Board has previously recommended that the definition of universal service include support for single residential and business lines only. Though the Commission ultimately decided that the definition of universal service would include all lines, it committed to re-evaluate whether any non-primary lines should be included in the definition. SBC believes that it is both timely and appropriate for the Commission to reconsider this issue.

However, the Commission cannot simply consider this particular definitional issue in a public policy vacuum. This definitional issue has significant implications for price-cap regulation and implicit universal service support mechanisms which must be addressed as part of the broad reforms from the Commission's ongoing *Tenth Circuit Remand* and *Intercarrier Compensation* proceedings. As SBC has argued in previous filings, the Commission should conduct a comprehensive reform proceeding to replace the outdated system of implicit subsidies with a national plan for universal service. As the Commission narrows its definition to support only primary lines, existing state and federal price-cap regulations must concurrently provide carriers with sufficient flexibility to recover its costs through its rates.

²⁵ See *Recommended Decision* at para. 30, SBC Comments at 12-14.

III. CONCLUSION

Universal service support under the Act is intended to serve as a safety net, providing support only to the extent necessary to ensure that genuinely essential services are ubiquitously available at affordable rates. At this time, there is no basis for adding additional services to the list of core services. However, in light of the strain on the universal service fund caused by the erosion of the contribution base and increased demands on the universal service fund, the Commission should re-examine whether the universal service definition's inclusion of non-primary residential lines/connections and multi-line business services/connections is consistent with the requirements of section 254(c) and the goals of universal service. In either case, the Commission must address any modifications to the universal service definition as part of broader reforms resulting from its various ongoing proceedings in universal service and intercarrier compensation.

Respectfully submitted,

/s/ Christopher M. Heimann

Christopher M. Heimann

Gary L. Phillips

Paul K. Mancini

SBC Communications Inc.

1401 I Street, N.W., Suite 400

Washington, D.C. 20005

Phone: 202-326-8909

Its Attorneys

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